

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEN WALTERS and JOHN BONILLA, in
their respective capacities as Trustees of
the OPERATING ENGINEERS HEALTH
AND WELFARE TRUST FUND FOR
NORTHERN CALIFORNIA; BOARD OF
TRUSTEES OF THE PENSION TRUST
FUND FOR OPERATING ENGINEERS;
BOARD OF TRUSTEES OF THE
PENSIONED OPERATING ENGINEERS
HEALTH AND WELFARE FUND;
BOARD OF TRUSTEES OF THE
OPERATING ENGINEERS AND
PARTICIPATING EMPLOYERS PRE-
APPRENTICESHIP, APPRENTICE AND
JOURNEYMEN AFFIRMATIVE ACTION
TRAINING FUND; BOARD OF
TRUSTEES OF THE OPERATING
ENGINEERS VACATION AND
HOLIDAY PLAN,

Plaintiffs,

v.

DIAMOND OAKS CONSTRUCTION
COMPANY, INC., A California
Corporation,

Defendant.

NO. C 04-04993 FMS

ORDER

Pursuant to the Court's Order to Show Cause dated June 10, 2005, Plaintiffs have submitted a Response addressing the Court's questions posed in its June 10th Order.

Although Plaintiffs have adequately addressed the majority of questions, there is at least one outstanding issue. Plaintiffs should therefore be prepared to address the following issue,

1 with supporting evidence, at the June 23rd hearing.

2 Plaintiffs have asserted that the defendant has failed to pay contributions of \$13,431.60
3 between December 2000 and August 2004. Complaint at 3. The amount of contribution is
4 assessed in terms of “each hour worked by employees performing work covered by the Master
5 Agreement.” Plaintiffs’ Response to Order to Show Cause at 3. To support its request,
6 Plaintiffs have submitted Exhibit B to Wayne McBride’s declaration. This exhibit, however, is
7 a conclusory record that lists only the total amounts that the plaintiffs claim they are owed.

8 Plaintiffs acknowledge that the contributions calculated were based on the participants’
9 hours of work, reported to the plaintiffs by the defendant. According to the Plaintiff’s
10 Response, Diamond Oaks submitted a report listing the participants’ hours every month,
11 presumably including the months of December 2000 through August 2004. Plaintiffs’
12 Response to Order to Show Cause at 4.

13 As discussed in the Court’s Order to Show Cause, whether or not damages are awarded
14 is discretionary. Thus, before an award will be issued, the plaintiffs must demonstrate that the
15 amount of \$13,431.60 is appropriately based on the hours the participants worked. Plaintiffs
16 can best demonstrate this by submitting the reports completed by the defendant, reviewing the
17 participants’ monthly hours, and explaining how the calculation was completed based on the
18 hours reported by Diamond Oaks. Thus, plaintiffs should be prepared to submit such evidence
19 at the June 23rd, 2005 hearing.

20 **IT IS SO ORDERED**

21
22
23 Dated: June 20, 2005

_____/s/
FERN M. SMITH
United States District Judge